

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

April 17, 2018

To: Subcommittee on Energy Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Subcommittee Markup on H.R. 5174, the “Energy Emergency Leadership Act;” H.R. 5175, the “Pipeline and LNG Facility Cybersecurity Preparedness Act;” H.R. 5239, the “Cyber Sense Act of 2018;” H.R. 5240, the “Enhancing Grid Security Through Public-Private Partnerships Act;” and H.R. 4606, the “Ensuring Small Scale LNG Certainty and Access Act”

On Wednesday, April 18, 2018, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy will hold a markup of H.R. 5174, the “Energy Emergency Leadership Act;” H.R. 5175, the “Pipeline and LNG Facility Cybersecurity Preparedness Act;” H.R. 5239, the “Cyber Sense Act of 2018;” H.R. 5240, the “Enhancing Grid Security Through Public-Private Partnerships Act;” and H.R. 4606, the “Ensuring Small Scale LNG Certainty and Access Act.”

I. H.R. 5174, ENERGY EMERGENCY LEADERSHIP ACT

Rep. Walberg (R-MI) and Rep. Rush (D-IL) introduced H.R. 5174, the Energy Emergency Leadership Act, on March 6, 2018.

The legislation amends Section 203(a) of the Department of Energy (DOE) Organization Act to create a new DOE Assistant Secretary position with jurisdiction over all energy emergency and security functions related to energy supply, infrastructure, and cybersecurity. The bill authorizes the new Assistant Secretary to provide, upon request of a State, local, or tribal government, DOE technical assistance, and support and response capabilities with respect to energy security threats, risks, and incidents.

II. H.R. 5175, PIPELINE AND LNG FACILITY CYBERSECURITY PREPAREDNESS ACT

Rep. Upton (R- MI) and Rep. Loeb sack (D-IA) introduced H.R. 5175, the Pipeline and LNG Facility Cybersecurity Preparedness Act, on March 6, 2018. The bill requires the Secretary of Energy to carry out a program to establish policies and procedures that would improve the physical and cyber security of natural gas transmission and distribution pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facilities.

Under this program, the Secretary would establish a program to coordinate Federal agencies, States, and the energy sector to ensure security and resiliency of pipelines and LNG facilities. The Secretary would coordinate response to, and recovery from, physical and cyber incidents affecting the energy sector. The Secretary would also develop advanced cybersecurity technologies, perform pilot demonstration projects, and establish workforce development security curricula for pipelines and LNG facilities. Finally, the Secretary would provide mechanisms to help the energy sector evaluate, prioritize, and improve security capabilities for such facilities.

III. H.R. 5239, CYBER SENSE ACT OF 2018

Rep. Latta (R-OH) and Rep. McNerney (D-CA) introduced H.R. 5239, the Cyber Sense Act of 2018, on March 9, 2018.

H.R. 5239 requires the Secretary of Energy to establish the Cyber Sense Program. This voluntary program would identify cyber-secure products that could be used in the bulk-power system. In addition to making DOE responsible for promoting cyber-secure products, this legislation requires DOE to determine a testing process for Cyber Sense products and establish a cybersecurity vulnerability reporting process and database.

Additionally, the bill requires DOE to provide technical assistance to electric utilities, manufacturers, and other relevant stakeholders related to cybersecurity vulnerabilities in products under the Cyber Sense program. The bill requires all cyber-secure products to be reviewed biennially to determine how such products respond to and prevent cyber threats. This legislation also requires DOE to solicit public comment before establishing or altering the Cyber Sense Program.

IV. H.R. 5240, ENHANCING GRID SECURITY THROUGH PUBLIC-PRIVATE PARTNERSHIPS ACT

Rep. Latta (R-OH) and Rep. McNerney (D-CA) introduced H.R. 5240, the Enhancing Grid Security Through Public-Private Partnerships Act, on March 9, 2018. This legislation contains provisions to address the physical and cyber security of electric utilities.

H.R. 5240 directs the Secretary of Energy, in consultation with States, other Federal agencies, and industry stakeholders, to create and implement a program to enhance the physical

and cyber security of electric utilities. Among other things, this program would develop voluntary implementation of methods for assessing security vulnerabilities. It would provide cybersecurity training to electric utilities, advance the cybersecurity of utility third-party vendors, and promote sharing best practices and data collection in the electric sector. The bill further directs the Secretary of Energy to submit a report to Congress on cybersecurity and distribution systems.

Finally, the bill instructs the Secretary of Energy to update the Interruption Cost Estimate (ICE) Calculator at least once, every two years. The ICE Calculator, developed by DOE's Lawrence Berkley Lab and Nexant, Inc., is an electric reliability planning tool for estimating electricity interruption costs and the benefits associated with reliability improvements.¹

V. H.R. 4606, ENSURING SMALL SCALE LNG CERTAINTY AND ACCESS ACT

Rep. Johnson (R-OH) introduced H.R. 4606, the "Ensuring Small Scale LNG Certainty and Access Act," on December 11, 2017. The bill amends section 3(c) of the Natural Gas Act to deem applications for "importation or exportation of a volume of natural gas that does not exceed 0.14 billion cubic feet per day" to be in the public interest.²

This bill is ostensibly intended to codify the Department of Energy's (DOE) small-scale liquefied natural gas (LNG) rule, yet it fails to include the proposed rule's requirement that applications qualify for a categorical exclusion from the National Environmental Policy Act (NEPA). According to the Congressional Research Service, Eagle LNG Partners Jacksonville LLC is the only project that does not merit a categorical exclusion but would still meet the capacity requirements of the small-scale LNG rule.³ Since the bill does not include a categorical exclusion provision, Eagle LNG Partners Jacksonville LLC would be the only current project to benefit from this new expedited process. Even if H.R. 4606 did include all aspects of the small-scale LNG rule, qualifying small-scale applications could be approved without any public notice or comment, or need for a public interest determination. Additionally, because there is no limit on the number of small-scale applications an entity could have, an applicant could skirt requirements for larger exports by breaking a proposal into smaller pieces. An unrestricted export policy could lead to even higher levels of LNG exports, which could have significant impacts on domestic natural gas prices and adversely affect American consumers and manufacturers.

¹ Department of Energy, Interruption Cost Estimate Calculator (www.icecalculator.com) (accessed Mar. 10, 2018).

² For background information on LNG exports and DOE's small scale LNG rule, please see the [memo from the January 19, 2018 legislative hearing](#).

³ Congressional Research Service, *U.S. Liquefied Natural Gas (LNG) Exports: Prospects for the Caribbean* (Nov. 1, 2027) (www.crs.gov/reports/pdf/R45006) (R45006).